

G-008/C-91-942 ORDER GRANTING MOTION TO COMPEL DISCOVERY IN PART
AND EXTENDING TIME FOR FILING COMMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
of the Minnesota Alliance for
Fair Competition Against
Minnegasco, a Division of Arkla,
Inc.

ISSUE DATE: January 5, 1993

DOCKET NO. G-008/C-91-942

ORDER GRANTING MOTION TO COMPEL
DISCOVERY IN PART AND EXTENDING
TIME FOR FILING COMMENTS

PROCEDURAL HISTORY

On November 27, 1991 the Minnesota Alliance for Fair Competition (MAC), a trade organization of plumbing, electrical and appliance associations, filed a complaint against Minnegasco, a regulated gas utility.

On January 29, 1992 the Commission issued its ORDER SEVERING MINNEGASCO FROM THE INVESTIGATION DOCKET, GRANTING DISCOVERY RIGHTS, REQUIRING REPORT AND AUTHORIZING COMMENTS. That Order removed Minnegasco from an ongoing generic investigation of appliance sales and service operations by regulated utilities and established this complaint docket. It also granted MAC discovery rights and required MAC to file a report on the results of its investigation.

On November 10, 1992, the Commission issued its ORDER ESTABLISHING ACCOUNTING PROCEDURES AND REQUIRING FURTHER FILINGS. Among other things the Commission directed Minnegasco to file detailed information with respect to cost allocation methods, regulatory costs and the Company's leak survey program on or before November 30, 1992. Parties were given 20 days to respond to Minnegasco's filing.

On November 30, 1992, Minnegasco made a filing in response to the November 10, 1992 Order.

On December 15, 1992, the Minnesota Department of Public Service (the Department) and the Minnesota Alliance for Fair Competition (MAC) filed requests for additional time to respond to Minnegasco's filing. In addition, MAC filed a Motion to Compel Discovery.

On December 18, 1992, Minnegasco filed a reply to MAC's motions and motions of its own requesting 1) an extension of time to respond to MAC's discovery, 2) mutual discovery, and 3) a motion for a contested case hearing. Except as to its reply to MAC's Motion to Compel and request for an extension of time to reply to MAC's information Requests, these filings were untimely for consideration at the Commission's December 21, 1992 meeting and will be considered in due course at a later date.

On December 21, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

MAC's Information Requests and Minnegasco's Responses

On December 4, 1992, MAC sent Minnegasco Information Requests 198-214, sent Information Requests 215-217 to Minnegasco on December 7, 1992 and Information Requests 218-220 on December 14, 1992. On December 11, 1992, Minnegasco responded that it would not respond to MAC's Information Requests. Minnegasco stated that in accordance with the Commission's January 29, 1992 Order, discovery in the MAC docket had long since expired.

In a motion filed December 15, 1992, MAC requested the Commission to find that MAC has discovery rights in this matter and order Minnegasco to provide responses immediately to MAC's eleventh, twelfth, and thirteenth sets of information requests (Information Requests 198-220). MAC argued that nothing in the Commission's January 29, 1992 Order cited by MAC or the subsequent Protective Order issued by the Commission in this matter terminated MAC's discovery rights in this matter, as Minnegasco's December 11, 1992 letter refusing to provide the requested information alleged.

In its December 18, 1992 filed reply to MAC's Motion to Compel, Minnegasco disputed MAC's right to conduct discovery at this time. Minnegasco cited the Commission's January 29, 1992 Order in this matter as closing discovery "at the conclusion of the 90-day fact development period" and MAC's agreement that it would not conduct discovery after May 29, 1992. In addition, Minnegasco specifically objected to MAC's Information Request 214. Minnegasco argued that Information Request 214 was inappropriate and untimely. Minnegasco proposed, however, that it be required to respond to MAC's discovery (except Information Request 214) provided it (Minnegasco) were also granted discovery rights. In any event, Minnegasco requested an extension of time to do so until January 8, 1993.

At the December 21, 1992 hearing before the Commission, Minnegasco did not assert its requests for discovery against MAC or for a contested case hearing. Instead, it stated that it would respond to all MAC's discovery except Information Request 214 despite the agreement that MAC had signed agreeing that it would not request discovery from Minnegasco after May 29, 1992.

Information Request 214

In its Information Request 214, MAC bundled a number of previously submitted Information Requests that MAC asserted had not been properly responded to by Minnegasco. Minnegasco stated that the information requests bundled into Information Request 214 fall into two categories: 1) information requests that MAC is precluded from seeking responses to by reason of a May 1992 agreement between MAC and Minnegasco and 2) information requests to which Minnegasco has already fully responded.

The Commission finds that it is not prepared to decide at this time whether it will compel Minnegasco to provide the information requested in Information Request 214.

MAC's Discovery Rights

MAC's entitlement to discovery of the requested matter (except for Information Request 214) is clear. MAC's discovery rights were established in the Commission's January 29, 1992 Order. Contrary to Minnegasco's assertion, that Order did not set a termination date for those rights. Nor could any agreement between Minnegasco and MAC terminate MAC's rights established by Commission Order. Those rights were expressly granted by the Commission to serve a Commission purpose, i.e. "...[t]o facilitate the Commission's examination of the issues raised in MAC's complaint." ORDER SEVERING MINNEGASCO FROM THE INVESTIGATION DOCKET, GRANTING DISCOVERY RIGHTS, REQUIRING REPORT AND AUTHORIZING COMMENT (January 29, 1992). Under the January 29, 1992 Order, MAC has and will continue to have the authority to conduct discovery in this matter until further Order of this Commission. As such, MAC's discovery rights do not need to be renewed, nor do they depend, as Minnegasco suggests, on Minnegasco being granted discovery rights.

In this Order, therefore, the Commission will direct Minnegasco to respond on or before January 8, 1993 to all MAC's information requests except Information Request 214 and grant MAC until January 20, 1993 to file comments.

Minnegasco's request for an extension of time to respond to MAC's discovery requests (except Information Request 214) will be granted. MAC did not object to this extension. It is appropriate that Minnegasco request extensions of time to respond to discovery requests when this is necessary. The Commission believes that setting a time certain response deadline for Minnegasco will reestablish productive momentum in this matter.

The Department's Motion for an Extension of Time to Comment

Under the Commission's November 10, 1992 Order in this matter, the Department's comments were due on December 21, 1992, 20 days after the date that Minnegasco made its filing in response to the November 10, 1992 Order. The Department requested a 30-day extension of time for filing its comments. In support of its motion, the Department stated that its analysts were currently occupied with the Minnegasco rate case hearing which is still in progress. The Department also noted that MAC recently served deposition notices for three Minnegasco expert witnesses in response to Minnegasco's filing and that the Department would benefit from the information obtained through these depositions in preparing its comments.

The Commission finds that granting the Department additional time to file its comments will benefit the investigatory stage of this complaint proceeding. The Commission will grant the Department's request and require comments filed by all parties no later than January 20, 1993.

ORDER

1. On or before January 8, 1993, Minnegasco shall respond to the following discovery requests of the Minnesota Alliance for Fair Competition (MAC): Information Requests 198-213 and 215-220.
2. The requests of the Minnesota Department of Public Service (the Department) and MAC for extensions of time to file comments regarding Minnegasco's November 30, 1992 filing are granted. All parties shall file their comments regarding Minnegasco's November 30, 1992 filing on or before January 20, 1993.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)